CRIMINAL APPEAL (DB) No.62 OF 1988

*****

Against the judgment and order dated 21.12.1987, passed by Shri Kedar Nath, learned Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No.178 of 1986.

*****

Mannu Sao : .... Appellant

Versus

The State of Bihar: .... Respondent

*****

For the Appellant: Mr. Anand Mohan Verma, Advocate.

For the S t a t e: Mr. Lala Kailash Bihari Prasad, Senior Advocate & Public Prosecutor.

*****

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE MADHAVENDRA SARAN

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S K Katriar, J. The sole appellant is aggrieved by the judgment dated 21.12.1987, passed by the learned Sessions Judge, Nalanda at Biharsharif, whereby he has been convicted under section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life. He has also been convicted under section 201 of the IPC, and has been sentenced to undergo rigorous imprisonment for three years. Both the sentences have been directed to run concurrently. It is a case of circumstantial evidence.

We shall hereinafter describe the accused Mannu Sao as the appellant.

2. On 14.12.1985, at 11.00 AM, a Fardbeyan at the instance of the appellant was recorded by P.W.4 (Hridya Narain Singh), Sub-Inspector of Police of Nalanda Police Station, that he is living with his wife Bimala Devi in his cabin at his agricultural lands in village Mohanpur, he is engaged in the avocation of cultivation. According to the Fardbeyan, he had on that day, at about 9.00 AM, gone over to Nalanda More for some personal work, and had returned to his cabin at about 10.30 AM. He found his wife Bimla Devi lying in burnt condition in amidst chilly plantation in front of his cabin. Her body was very badly burnt and there was trail of kerosene oil from the cabin to the well where the dead body was lying. He found that Bimla Devi was partially alive (*कुछ कुछ जिन्दा थी*). He informed one Bhola Babu for help to take her to a Doctor for treatment. By the time she could be lifted to be taken for treatment, she died. He is of Teli caste, and his wife was of Koiri caste. He was about to leave to go over to the police station but the Sub-Inspector of Police arrived there. It was registered as U.D. Case No.7/85, dated 14.12.1985, and has been marked Exhibit-7 during the course of the trial.

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3. Investigation commenced, the inquest report was prepared, and the dead body was sent for post-mortem to Sadar Hospital, Biharsharif. The post-mortem had taken place on 14.12.1985, at 3.10 PM. On receipt of the same, and in view of the findings recorded therein, P.W.4 submitted written report (Exhibit-4) dated 24.1.1986 to the learned Judicial Magistrate, 1st Class, Biharsharif. According to the same, he had heard hulla on 14.12.1985, that a woman got burnt near the appellant's cabin. On receipt of the information, he had gone over to the place where he found Bimala Devi, wife of the appellant, in dead condition. Her entire clothes below her neck were burnt. The legs were bended. The left hand was also bended towards her chest. Both the eyes were closed and the tongue was protruding. A reference was also made to the said U.D. Case No.7/85, dated 14.12.1985, with which the investigation had commenced. The hairs were not at all burnt. The F.I.R. further states that the contents of U.D. Case No.7/85, had caused the suspicion in his mind and, therefore, he has sent the dead body for post-mortem. The entire text of the post-mortem report is reproduced in the F.I.R. which, inter alia, stated that the death of Bimala Devi was on account of throttling and ante-mortem injuries and, in order to cause disappearance of the evidence, had

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burnt the dead body. On the basis of the written report, a formal F.I.R. was drawn marked Exhibit-5 and it was registered as Silao (Nalanda) P.S. Case No.20/86, dated 24.1.1986, under sections 302 and 201 of the IPC. The Investigating Officer submitted charge-sheet against the appellant for the murder of Bimala Devi, his wife, alleging offences under sections 302 and 201 of the IPC. Cognizance was taken and charges were framed against the appellant under sections 302 and 201 of the IPC on 8.7.1986.

4. The appellant pleaded innocence, stated that he had not committed the offence, and claimed to be tried.

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5. The prosecution examined the following witnesses in support of his case:

(i) P.W.1 (Brijnandan Singh), a co-villager.

(ii) P.W.2 (Muneshwar Prasad), a co-villager.

(iii) P.W.3 (Dr. Bidhu Bhusan Singh), the Medical Officer who had conducted the post-mortem on the dead body.

(iv) P.W.4 (Hirdya Narain Singh), the Officer in-Charge who had conducted the investigation and submitted charge-sheet.

6. The prosecution has proved the following exhibits in support of its case:

Exhibit-1: Signature of P.W.1 on the inquest report, proved by P.W.1.

Exihbit-1/1: Signature of P.W.2 on the inquest report, proved by P.W.2.

Exhibit-2: The post-mortem report in the signature of P.W.3, proved by P.W.3 himself.

Exhibit-3: Inquest report in the signature of P.W.4 and proved by him.

Exhibit-4: Written report in the signature of P.W.4 and proved by him.

Exhibit-5: Formal F.I.R. proved by P.W.4.

Exhibit-6: The Station-diary entry regarding the receipt of information of death of Bimala Devi proved by P.W.4.

Exhibit-7: The Fardbeyan of the appellant registered as U.D. Case No.7/85.

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7. The appellant did not examine any witness in support of his case. The appellant in his statement under section 313, Cr.P.C. denied his involvement in the occurrence and the death of his wife, stated that he is innocent and claimed to be tried.

8. On a consideration of the materials on record, the learned trial court held that it is a

case of circumstantial evidence and the chain of circumstances led to the guilt of the accused. He held that the deceased was the wife of the appellant. They were living together in a room on his lands adjoining the pump-house known as 'cabin'. She died on account of throttling of the trachea and ante-mortem injuries, whereafter the appellant had burnt her after she was already dead in order to cause disappearance of the evidence of her death. He, therefore, convicted and sentenced him in the aforesaid manner. Hence this appeal at the instance of the appellant.

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9. P.W.1 is Brijnandan Singh, and is a co-villager. He has stated in his examination-in-chief that the appellant has a tube-well on his lands at village-Mohanpur, next to his Khalihan where the appellant had also reached. He had gone over to that place where he had found Bimala Devi in a burnt condition. She was a concubine of the appellant. She was *Koiri* by caste, and the appellant a *Teli* by caste. The police had prepared the inquest report of the dead body with the signatures of P.Ws.1 and 2. He identified his signature on the inquest report marked Exhibit-1. He identified the appellant who was present in court.

He has stated in his cross-examination that *Koiries* are in pre-dominently large number in village Mohanpur, and that Prasadi Mahto is her father and Sushila Devi her mother. About 50 yards south of the appellant's tube-well, there is a road which leads to Nalanda ruins. It is a busy road. There are shops providing tea, betel and sweets by the road side. By the south of the road is the house of Prasadi Mahto, where he lives with his family. Prasadi Mahto has two sons. Bimala Devi was married in village Darbespura. They had one son aged six years, who was living with Bimala Devi. About one month earlier, her husband and his caste men had forcibly taken away the son from the custody of Bimala Devi, whereafter she used to be sad and sorry. He has further deposed to the effect that the illicit live-in relationship of Bimala Devi and Mannu Sao was disliked by the *Koiri* community of the area who disapproved of the same and were quite unhappy about it. Bimala Devi had lived with a few other persons before she had settled down with the appellant. Bimala Devi's husband had re-married prior to the death of Bimala Devi. There was never any quarrel between Bimala Devi and Mannu Sao. Mannu Sao's ancestral house is in Jhing Nagar Mohalla of Biharsharif and his landed property is at village

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Mohanpur. Mannu Sao had reached the place of occurrence after P.W.1 had reached there.

It appears to us from a perusal of the deposition of P.W.1 that Bimala Devi was married to somebody else and had sired a son. They perhaps separated after the second marriage of her husband, whereafter she returned to her Naihar and lived with a number of persons and had finally settled with the appellants. Their illicit relationship had caused unhappiness in the *Koiri* community of the area.

10. P.W.2 is Muneshwar Prasad, a co-villager, and a tractor driver. His signature on the inquest report has been marked Exhibit-1/1. He knew nothing about the occurrence and had put his signature on the inquest report at the behest of the I.O.

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The prosecution declared him to be a hostile witness but was, however, offered for cross-examination. He has stated in his cross-examination that the police had not recorded his statement. A number of suggestions were given to him which he denied.

P.W.2 seems to have been gained over by the defence and was rightly declared to be a hostile witness. He has falsely stated in Court that his statement was not recorded by the police. We have verified from the case-diary and find that his

statement was recorded by the police during the course of investigation. P.W.2 has not brought on record any material to support or contradict the prosecution case and, in any case, is an undiluted liar. We, therefore, completely discard his testimony.

11. P.W.3 is Dr. Bidhu Bhushan Singh who was posted as Civil Assistant Surgeon, Sadar Hospital, Biharsharif, on 14.12.1985. He had conducted the post-mortem on the dead body of Bimala Devi on 14.12.1985, at 3.10PM. He proved his post-mortem report marked Exhibit-2, and is reproduced hereinbelow:

> I performed post-mortem examination on dead body of Bimala Devi H/F, aged 28 years w/o Manu Sah of village Mohanpur, P.S. & District Nalanda, permanent address –Jhil Nagar, P.S. Biharsharif, District- Nalanda on 14.12.1985 at 3.10 P.M. and found following ante-mortem and post-mortem injuries:
>
> Rigor mortis was present in all the four limbs.
>
> Ante-mortem injury: The tongue was swollen, bruised protruding and dark in colour bitten by teeth. Both eyes were closed and swollen, one bruise 2″x$^{1}/_{2}$″ on the right forehead region, face of deceased was cyanosed.
>
> On dissection: There was extravasations of blood into the neck muscle, which was lacerated, the larynx and trachea were congested. There was fracture of hycid bone, clotted blood was present underneath the scalp on the right forehead region. There was fracture of right parietal skull bone.

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> Stomach was empty, lungs liver kidney and spleen were congested. Both chambers of heart were empty and congested. Urinary bladder was empty, large intestine- left forehead fractured. Uterus was non-pregnant, clotted blood was present the brain merings. Burn was post-mortem.
>
> In my opinion death occur due to asphyxia, shock and haemorrhage result of throttling and above noted injury.
>
> Time elapsed since death- about 12 hours to 16 hours.

He has stated in his cross-examination that rigor mortis starts four hours after the death and it covers the entire body between 24 hours to 36 hours in winter days, and 36 to 48 hours in summer days. Rigor Mortis takes about 24 hours in passing off. He has further stated that congestion of trachea was not possible by pressing of neck by the victim herself. There was no visible external injury on the neck due to burn. The congestion of trachea is possible if someone else presses the neck by hands with force or by rope with force.

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It appears to us on a perusal of the deposition of P.W.3 read with the post-mortem report that death had taken place due to throttling, pressing of the neck, and on account of ante-mortem injuries, which had taken place about 12 hours to 16 hours earlier, and takes the time of death between 12 in the night to 3.00AM, during the night intervening

13.12.1985 to 14.12.1985. It is evident from the deposition of P.W.3 that the death was not on account of post-mortem injuries, namely, burnt injuries.

12. P.W.4 is Hridaya Narain Singh, who was posted as Officer in-Charge of Nalanda P.S. on 14.12.1985. He has stated in his examination-in-chief that he had learnt of the rumour that a woman had burnt herself to death. He went over to village Mohanpur and had recorded the Fardbeyan of her husband, the appellant, on the basis of which U.D. Case No.7/85, dated 14.12.1985 was registered. He proved the same and has been marked Exhibit-3. He had forwarded the dead body for post-mortem examination. He submitted a written report, marked Exhibit-4, on the basis of the post-mortem report. This led to formal F.I.R. marked Exhibit-5. He then inspected the place of occurrence and has given reasonable details of the same. He has given the location of the room where the appellant and Bimala Devi were living, described as cabin, which is adjacent to the appellant's tube-well. There were two chowkies, a table and a stove, in the cabin. He also found a lota with kerosene oil on the ground. Some amount of kerosene oil was found on the floor also, and there was smell of kerosene also. The dead body was found amidst chilly plantations close to the cabin. The

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chilly plants around the dead body were found burnt. The appellant was not available. He had arrested the appellant on 24.1.1986 near his cabin. He had submitted the charge-sheet dated 5.4.1986.

He has stated in his cross-examination that he is the informant as well as I.O. in the case. He had started investigation on 24.1.1986. He had in fact commenced investigation with the U.D. Case. He had not traced any evidence which would disclose that Bimala Devi was found burning or was being burnt. In fact every body had seen the dead body in burnt condition. He had further stated that he had reached the place of occurrence on 24.1.1986, at 2.40 PM. He had arrested the appellants during that period while he was hiding on his lands. He had also recorded the statement of the mother of Bimala Devi who lives at village Mohanpur. There is a brick-kiln and post-office near the place of occurrence.

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P.W.4 was again cross-examined on recall. He proved the station-diary entry in the hand-writing of S.D. Singh (Nalanda, P.S.), and has been marked Exhibit-6. He also proved the Fardbeyan recorded as U.D. Case No.7/85, marked Exhibit-7.

P.W.4 has given a reasonably good description of the place of occurrence and the items found there. He has impressed us as a truthful

witness who conducted the investigation honestly, may not be exhaustively, for the reasons to be indicated hereinafter.

13. The appellant in his statement under section 313, Cr.P.C. denied his involvement in the occurrence and claimed innocence.

14. Learned counsel for the appellant has submitted that it is a case of no evidence. He relies on the on the judgment of the Supreme Court, reported in **A.I.R. 1975 S.C. 258 (The State of Punjab Vs. Bhajan Singh and others)**, paragraphs 17 and 26. He next submits that it is not even a case of circumstantial evidence and falls far short of the requirements enumerated in the judgment of the Supreme Court reported in **A.I.R. 1984 S.C. 1622 (paragraphs 152,153 and 164) (Sharad Birdhichand Sarda Vs. State of Maharashtra).**

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14.1) Relying on the same judgment, he submits that in case two views are possible on the same set of evidence, then the court should lean in favour of the appellant. He further submits that it is a case of suicide for the reasons quite clear from the evidence on record. He lastly submits that the prosecution has not proved the motive for the murder.

15. The learned Public Prosecutor has submitted that it is a well-proved case of circumstantial

evidence. He has submitted at length as to the detailed circumstances which complete the chain of events and is only consistent with the hypothesis of the guilt of the accused. He has relied on **Sharad Birdhichand Sarda Vs. State of Maharashtra** (supra). He has next submitted that it is not essential to prove the motive for the crime which is lodged in the mind and the heart of the accused. He relies on the judgment reported in **(2006)11 S.C.C. 323 (Bhimapa Chandappa Hosamani and others Vs. State of Karnataka).** He has lastly submitted that in a case of circumstantial evidence like the present one, the husband, is bound in law to explain the reasons and the circumstances for the death of the deceased.

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16. We have perused the materials on record and considered the submissions of learned counsel for the parties. It is a case of circumstantial evidence and there is no eye witness to prove the prosecution case. Indeed in view of the nature of the prosecution case, there cannot be an eye witness in this case because the murder is alleged to have taken place in the confinement of the appellant's bed-room situate on his agricultural lands. Of the four prosecution witnesses, P.W.2 has been declared hostile and has to be excluded from consideration. We would be well advised to remind

ourselves of the law governing the issue at the inception. Learned counsel for the appellant has placed particular reliance on the following portion of the judgment in **State of Punjab Vs. Bhajan Singh (**supra):

> "17. The circumstances of this case undoubtedly create suspicion against the accused. Suspicion, by itself, however strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused. Another weakness of the prosecution case is that as many as four persons have been involved in this case. Even if it may be assumed that the dead bodies which were recovered from the place in front of the house of the accused were those of Harbans Singh and Bachan Singh deceased and that their death was homicidal, it is difficult to say whether the dastardly crime was the act of one or two culprits or of a larger number of them. In any case it is difficult to fix their identity."

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17. Learned counsel for the appellant has placed strong reliance on **the** following portion of the judgment in **Sharad Birdhichand Sarda Vs. State of Maharashtra (**supra):

> "164. So far as this matter is concerned, in such cases the Court must carefully, scan the evidence and determine the four important circumstances which alone can justify a conviction:
>
> (1) There is a clear motive for an accused to administer poison to the deceased;
>
> (2) that the deceased died of poison said to have been administered;
>
> (3) that the accused had the poison in his possession,
>
> (4) that he had an opportunity to administer the poison to the deceased."

> "165. In the instant case, while two ingredients have been proved but two have not. In the first place, it has no doubt been proved that Manju died of potassium cyanide and secondly, it has also been proved that there was an opportunity to administer the poison. It has, however, not been proved by any evidence that the appellant had the poison in his possession. On the other hand, as indicated above, there is clear evidence of P.W.2 that potassium cyanide could have been available to Manju from the plastic factory of her mother, but there is no evidence to show that the accused could have procured potassium cyanide from any available source. We might here extract a most unintelligible and extraordinary finding of the High Court-
>
> "It is true that there is no direct evidence on these two points, because the prosecution is not able to lead evidence that the accused had secured potassium cyanide poison from a particular source. Similarly there is no direct evidence to prove that he had administered poison to Manju. However, it is not necessary to prove each and every fact by a direct evidence. Circumstantial evidence can be a basis for proving this fact."

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In other words, learned counsel for the appellant submits that, in the facts and circumstances of the present case, there is greater possibility that the appellant had not murdered his wife and his conduct and circumstances are consistent with the presumption of innocence.

18. Learned counsel for both the parties have relied on the following portion of the judgment in

Sharad Birdhichand Sarda Vs. State of Maharashtra (supra):

> "152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2, SCC 793: (AIR 1973 SC 2622) where the following observations were made:
>
> "certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions".
>
> (2) the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show

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that in all human probability the act must have been done by the accused.

"153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

"156. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry's case (supra) was approved by this Court in Anant Chintaman Lagu v. State of Bombay, (1960) 2 SCR 460: (AIR 1960 SC 500), Lagu's case as also the principles enunciated by this Court in Hanumant's case (supra) have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases- Tufail's case (AIR 1969 (3)SCC 198) (Supra), Ramgopal's case (AIR 1972 SC 656) (Supra), Chandrakant Nyalchand Seth vs. State of Bombay(Criminal Appeal No.120 of 1957 decided on 19.2.1958), Dharambir Singh v. State of Punjab (Criminal Appeal No.98 of 1958 decided on 4.11.1958). There are a number of other cases where although Hanumant's case has not been expressly noticed but the same principles have been expounded and reiterated, as in Naseem Ahmed v. Delhi Administration, (1974)2 SCR 694 (696): (AIR 1974 SC 691 at p. 693). Mohan Lal Pangasa v. State of U.P., A.I.R. 1974 SC 1144 (1146), Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCR 384 (390): (AIR 1981 SC 765 at p. 767) and MG. Agarwal v. State of Maharashtra, (1963) 2 SCR 405 (419): (AIR 1963 SC 200 at p. 206) a five Judge Bench decision."

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19. It appears to us that there is a greater need of keeping the aforesaid principles in mind when scanning the evidence in the present case.

20. On a perusal of the materials on record, it appears to us that the deceased had separated from her erstwhile husband, though the coupled had sired a son. There is no evidence of formal divorce. After they had separated, the husband had re-married and the deceased had returned to her Naihar, whereafter she lived with different persons and had ultimately settled with the appellant. It further appears from the evidence on record that the appellant is also married and developed illicit relationship with the deceased and was, therefore, living in his cabin on his agricultural lands quite away from his family. The evidence on the one hand is that she was the appellant's concubine and had live-in relationship, and the appellant's own version in his Fardbeyan of 14.12.1985 (Exhibit-7) is that she was his wife, were living in the cabin, and were together in the cabin on the fateful night. We are not required to adjudicate whether or not they were legally married husband and wife. They were perhaps not. Be that as it may, it is certain that both were living together in the cabin like husband and wife. P.W.4 has deposed that the cabin accommodated two chowkies, a table and a stove. Therefore, there is no difficulty in concluding that the two were living together like husband and wife in isolation, in his

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cabin, away from the din and bustle of a crowded locality and the family. They were together in the cabin on the fateful night.

21. The evidence of P.W.3 is of the greatest importance in this case and, to our mind, seems to conclude the matter. It is manifest on a perusal of the post-mortem report read with the deposition of P.W.3, that the deceased had died on account of asphyxia, shock and haemorrhage which was the result of throttling and the connected injuries. P.W.3 has further concluded that the death had taken place 12 hours to 16 hours prior to the time of the post-mortem examination which was conducted on 14.12.1985, at 3.10 PM. It is thus evident that the deceased was strangulated to death during the night intervening 13.12.1985 and 14.12.1985, between 12.00 in the night and 3.00AM. The medical evidence is further to the effect that the pressing of the neck could not have been self-inflicted.

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22. Law is well settled that in a situation like the present one where the deceased wife was in the care, custody and possession of the husband on the eve of her death, then the onus shifts on to him to explain the circumstances leading to her death. The defence has not examined any witness, nor has placed on record any material or document, to

explain the circumstances leading to her death. As stated hereinabove, the appellant has in his Fardbeyan (Ext.7) admitted that they were living together like husband and wife in the cabin, and were there together on the fateful night. They were together till 9.00 AM in the morning of 14.12.1985, whereafter he had gone over to Nalanda More for some personal work and had returned by 10.30 A.M. He has further stated therein that he had found his wife in burnt condition amidst the chilly plants, seeking to create the impression she had committed suicide by burning herself during the period of his absence, little realising that he would be falsified by the medical evidence.

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23. The medical evidence is quite clear that her death was the result of strangulation and ante-mortem injuries, and had taken place during the night hours. It is thus evident that the appellant had strangulated her to death in the night hours, whereafter he must have carried the dead body to the chilly plantations close by and set her on fire after sprinkling kerosene oil on her. P.W.4 had found in the room a lota with kerosene oil, some of which had fallen on the ground and was reeking with its smell. He has also deposed to the effect that he had found trail of kerosene from the room to the place where

the dead body was found. This would have obviously happened because his act of murder must have shaken him, in the hurry to execute his idea of giving it the colour of suicide, accentuated by absence of light or poor light, causing trail of kerosene from the cabin to the place where she was burnt.

24. Law is well settled that in a criminal trial of the present nature where the deceased wife died while in the care, custody and possession of the husband at the time of her death, then the husband has to explain the circumstances of the death. Law is advisedly so because such a murder has taken place in the privacy of the bed-room where no third person has access. If the law were not so, death of a wife would have been most easy because there would be no witness to the occurrence and the perpetrator would be go scot-free because it has taken place in the privacy of the bed-room or some such place of secrecy and confinement. In the present case, the defence has not examined any defence, nor has placed on record any materials or documentary evidence to discharge its onus in a situation the two were admittedly in the company in the confinement of the cabin. We are mindful of the position that the appellant's Fardbeyan (Exhibit-7) is not substantive evidence, but then surely and admittedly that is his own

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document which he has not disowned during the course of the trial. Section 58 of the Evidence Act is relevant in the present context and is reproduced hereinbelow for the facility of quick reference:

> "58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

25. In such a situation, the prosecution can take advantage of the facts stated in Exhibit-7 therein to the extent it is consistent with the prosecution evidence. On the contrary, his defence is based on the same in an effort to prove that it was a case of suicide.

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26. The only ground seemingly consistent with the innocence of the accused, as has been contended by the learned counsel for the appellant, is that it was a case of suicide and the deceased had burnt herself to death while he was away from 9.00 AM to 10.30 AM on 14.12.1985. We have not the slightest manner of doubt that, in view of the medical evidence which we have found hereinabove to be trustworthy,

the death had already been taken place earlier on account of throttling, which was not self-inflicted. Death was on account of ante-mortem injuries. It is thus obvious that the deceased could not thereafter have committed suicide. She was already dead. This part of the appellant's version in Exhibit-7 is wholly inconsistent with the medical evidence, and is down-right falsehood.

27. Four questions were put to the appellants during the course of his statement under section 313, Cr.P.C. Two questions and the answers are reproduced hereinbelow for the facility of quick reference:

प्रश्नः *अभियोजन का यह भी कहना है कि आपने हत्या करने के उपरान्त हत्या का सबुत गायब करने के लिए शव में आग लगा दिया और उसे गायब करने की कोशिश की ताकि सजा से बच सकें।*

उत्तरः *जी नहीं ।*

प्रश्नः *आपने सूचना में यह कहा था कि आपकी स्त्री विमला देवी आग से जलकर मर गयी है शव परीक्षा से यह पता चला कि उनकी मृत्यु गला दबाकर की गयी है। क्या कहना है ।*

उत्तरः *हमने सूचना पुलिस को जलने के बारे में दिया था। उनकी हत्या नहीं की गयी है। गला उनका दबाकर मारा गया- गलत है।*

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28. Learned counsel for the appellant has also contended that the prosecution has not been able to prove the motive for the occurrence. The learned Public Prosecutor has rightly relied on the judgment

of the Supreme Court in **Bhimapa Chandappa Hosamani and others Vs. State of Karnataka** (Supra), paragraph 13 of which is reproduced hereinbelow for the facility of quick reference:

> "13. The trial court as well as the High Court have not accepted the evidence regarding existence of motive as alleged by P.W.1 in the first information report. In fact she herself in the course of her deposition denied the existence of such a motive. The High Court has agreed with the view of the trial court on this issue. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. The law on this aspect is well settled."
>
> **(Emphasis added)**

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Law is well settled that it is not essential for the prosecution to prove the motive for the crime if the evidence is truthful and convincing. The motive is lodged in the heart and the mind of the accused.

29. We are mindful of the words of caution indicated by the Supreme Court in its judgment reported in **1993 CRI. L.J. 1871 (Surinder Pal Jain V. Delhi Administration)**, paragraph 11 of which is

reproduced hereinbelow for the facility of quick reference:

> "11. There is no motive established in this case by the prosecution for the appellant to commit murder of his wife and the evidence of Tara Chand father of the deceased as well as the sister of the deceased and the tenants living in the same house disclosed that the relations between the husband and wife were cordial. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof."

(Emphasis added)

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30. Taking note of the words of caution indicated by the Supreme Court, we have been very careful in scrutinising the evidence on record. We are equally mindful of the position that other than the two official witnesses, there are only two prosecution witnesses one of whom has been declared hostile. However, the medical evidence in the present case coupled with the privacy in which the couple were together at the time of her death is consistent only with the hypothesis of the guilt of the appellant.

31. To summarise the position, the following circumstances leading to the death of the deceased at the hands of the appellant, complete the chain of circumstances:

(i) Both the appellant and the deceased appeared to be way-ward persons without moral values. Both of them had kicked their previous marriages and were living in each others company, like husband and wife, in a state of immorality and shamelessness. There are materials on record to show that after the deceased had returned from her Sasural to her Naihar, she had lived with different persons and had ultimately settled with the appellant in a state of live-in relationship, in the privacy of the cabin on his agricultural lands. In other words, both have been persons of without any compunction.

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(ii) Both had the requisite privacy and the loneliness and, therefore, the appellant had the opportunity to perpetrate the crime.

(iii) The appellant had the requisite opportunity to kill her in the dead hours of the night. Admittedly the appellant was in the company of the deceased throughout the night intervening 13.12.1985 and 14.12.1985.

(iv) Such way-ward persons do not need any motive to commit the crime. The prosecution is not

bound in law to prove the motive, and the motive is lodged in the heart and the mind of the accused. See the circumstances on record which could have possibly provided the motive for the crime. P.W.1 has stated in his cross-examination that the deceased had sired a son by her legitimate marriage and was living with her after she had returned to her Naihar. One month prior to her murder, her husband and *Sasural* people had forcibly taken away the boy, whereafter she had become despondent. This might be coming in the way of the appellant's sex life. A powerful desire for sex remaining unfulfilled can give rise to uncontrollable anger. There is evidence on record to show that the two belong to two different castes, and the residents of the village of the appellant's caste were strongly disliking the illegitimate relationship. It is, therefore, a possible situation that on account of the combined pressure of neglect of his wife and the life of depravity, the lust of sex having been satisfied for a period of one year, he might be longing to get back to his home and hearth after putting an end to the deceased. We are mindful of the position that these are possible situations and in the realm of conjectures. We are equally mindful of the law enunciated as indicated hereinabove that it

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is not necessary for the prosecution to prove the motive for the crime.

(vi) We are more than fully convinced that the deceased had died in the dark hours of the mid-night on account of throttling of the neck and ante-mortem injuries. She had not died on account of burn injury which was undoubtedly a post-mortem injury.

(vii) This also proves the chicanery on the part of the appellant to mislead his society and the police that she had committed suicide by burning herself. We have no manner of doubt that, in view of the medical evidence, she had died on account of ante-mortem injuries which could not have been self-inflicted, and the post-mortem injuries were created by the appellant to divert attention. Falsehood on the part of the appellant is writ large.

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(viii) We have no manner of doubt that the appellant resorted to falsehood to make out a case of suicide.

(ix) We are left with a strong feeling of satisfaction that the I.O. showed fairness in dealing with the matter. After he recorded the appellant's Fardbeyan (Exhibit-7) of 14.12.1985, he did not hasten to implicate him. Dictated by fairness, he prepared the inquest report and sent the dead body for post-mortem. It was only on the receipt of the

post-mortem report that he felt convinced, as we are today, that the appellant appeared to be guilty of the crime.

(x) We are equally convinced that in view of the facts and circumstances of the case, the chances of false implication are completely ruled out.

32. Before we finally conclude we would like to remind ourselves of the five golden principles described as 'Panchsheel' enunciated by the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra** (supra). The fifth principle is once again reproduced hereinbelow for the sake of emphasis so that we do not get deflected from the course of justice:

> "(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

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33. We are thus convinced that the chain of circumstances lead to the only hypothesis which is consistent with the guilt of the appellant, and is wholly inconsistent with his innocence. It would bear repetition to reiterate that the facts and circumstances of the case crowned by the medical evidence leads us to the irresistible conclusion that the appellant was guilty of the murder of Bimala Devi.

34. In the instant case from the chain of circumstance described and discussed above and also from the conduct of the accused, it is established beyond doubt that the murder of Bimla Devi, in the night of 13/14.12.1985, while she was in the cabin with the accused (husband), was committed by accused by throttling her neck, taking advantage of the loneliness of the place where he used to live with the deceased. It is further clear that the accused in order to extricate himself from the situation, attempted to make out a case of suicide. He had poured kerosene oil on the dead body and set fire to her dead body in the nearby 'Mirchai field'. He had not informed the police of her death. His conduct clearly proves that he had murdered his wife in the dead of the night by pressing her neck, and had thereafter set her on fire to cause disappearance of evidence of murder and to escape punishment. This being the position, both the charges under sections 302 and 201 I.P.C. have been proved against the appellant, Mannu Sao, beyond reasonable doubt. We, therefore, hold that the appellant Manu Sao guilty under section 302 and 201 of the IPC and accordingly convict him.

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35. In the result, the appeal fails and is dismissed. The conviction and sentences of the

appellant under sections 302 and 201 of the IPC are upheld. Both the sentences shall run concurrently. His bail bonds are cancelled and is hereby directed to surrender in the court of the learned trial court forthwith to serve the remainder of his sentences.

(S K Katriar, J.)

(Madhavendra Saran, J.)

Patna High Court, Patna
Dated the 11th day of September, 2008
S.K.Pathak/(A.F.R.)

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